

STORAGE NAME: h1927.frc.doc
DATE: February 25, 2002

HOUSE OF REPRESENTATIVES
FISCAL RESPONSIBILITY COUNCIL
ANALYSIS

BILL #: HB 1927
RELATING TO: Number of Judges/Dist. Courts
SPONSOR(S): Committee on Judicial Oversight and Representative Crow
TIED BILL(S): none

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIAL OVERSIGHT YEAS 10 NAYS 0
 - (2) FISCAL RESPONSIBILITY COUNCIL
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill creates 2 new appellate judges in the state courts system. The judges filling the new offices created by the bill are to be appointed by the Governor and take office for a term beginning on January 7, 2003.

The FY 2002-03 fiscal impact of the bill is \$433,047. The House version of the General Appropriations Act contains funding to implement this bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill increases the number of judges, which, together with support staff, increases the number of state employees.

B. PRESENT SITUATION:

Article V, s. 9, Fla.Const., provides:

SECTION 9. Determination of number of judges.-- The supreme court shall establish by rule uniform criteria for the determination of the need for additional judges except supreme court justices, the necessity for decreasing the number of judges and for increasing, decreasing or redefining appellate districts and judicial circuits. If the supreme court finds that a need exists for increasing or decreasing the number of judges or increasing, decreasing or redefining appellate districts and judicial circuits, it shall, prior to the next regular session of the legislature, certify to the legislature its findings and recommendations concerning such need. Upon receipt of such certificate, the legislature, at the next regular session, shall consider the findings and recommendations and may reject the recommendations or by law implement the recommendations in whole or in part; provided the legislature may create more judicial offices than are recommended by the supreme court or may decrease the number of judicial offices by a greater number than recommended by the court only upon a finding of two-thirds of the membership of both houses of the legislature, that such a need exists. A decrease in the number of judges shall be effective only after the expiration of a term. If the supreme court fails to make findings as provided above when need exists, the legislature may by concurrent resolution request the court to certify its findings and recommendations and upon the failure of the court to certify its findings for nine consecutive months, the legislature may, upon a finding of two-thirds of the membership of both houses of the legislature that a need exists, increase or decrease the number of judges or increase, decrease or redefine appellate districts and judicial circuits.

This provision vests the Supreme Court of Florida with the responsibility for determining the need for increasing or decreasing the number of judges in state courts other than the Supreme Court. The Constitution also provides that the Legislature "...may create more judicial offices than are recommended by the supreme court or may decrease the number of judicial offices by a greater number than recommended by the court only upon a finding of two-thirds of the membership of both houses, that such a need exists." This language has been interpreted by the Supreme Court to mean that the judicial certification order established the outer limits of what the Legislature may

approve in the absence of a two-thirds majority.¹ In other words, the Legislature, by a simple majority vote, may approve fewer than the number of judges recommended by the court. The two-thirds requirement would only apply if the Legislature wished to create judgeships in addition to those recommended by the court.

The State Courts System consists of 858 total justices and judges, as follows:

| | |
|----------------------------------|-----|
| Supreme Court justices | 7 |
| District Courts of Appeal judges | 62 |
| Circuit court judges | 509 |
| County court judges | 280 |

The Supreme Court entered a Certification Order on January 3, 2002. The order certified the need for a total of 49 new judges: 2 district court of appeal judges, 34 circuit judges, and 13 county judges.²

In 1999 and prior years, the Supreme Court used unweighted case filings per circuit judge as a guide in determining the need for additional judges.³ In 1997, the Legislature directed the Office of Program Policy Analysis and Government Accountability (OPPAGA) to review the efficiency of the method used by the Supreme Court to certify the need for additional judges. In March 1998, OPPAGA issued its report noting that the process used by the Supreme Court to establish the need for additional judges might not accurately identify where and when judges are needed. The report recommended that the Supreme Court adopt a weighted caseload system for assessing judicial workload and certifying the need for additional judges.⁴

The 1998 General Appropriations Act (Chapter 98-422, L.O.F.), appropriated \$75,000 to the judicial branch to contract for the development of a Delphi-based⁵ caseload weighting system to determine optimal caseloads for circuit and county judges; and, in conjunction with other factors, to determine the need for additional circuit and county court judges. The judicial branch was instructed to consult with OPPAGA on defining the scope of the work, selection of a consultant, and choosing a methodology for developing case weights and determining available judge time. The Supreme Court established the Delphi Policy Committee (DPC) to direct the study. The Committee consisted of 41 circuit and county judges. The Office of State Courts Administrator contracted with the National Center for State Courts to develop and validate a Delphi-based weighted caseload system.⁶ The DPC worked with chief judges, trial court judges, and OPPAGA.⁷

The Delphi approach was used to assign weights in minutes to different case types based on an assessment of the average amount of judicial time required for each type of case. Judicial time that must be spent on each case differs depending on case type and often increases as the law becomes more complex. It was assumed that this approach would produce a more accurate measure of judicial workload and the need for judges by differentiating between types of cases.

¹ *In re Advisory Opinion to the Governor*, 374 So. 2nd 959 (Fla. 1979).

² *In re: Certification of Need for Additional Judges (Corrected Opinion)*, Case No. SC01-2703 (Fla., January 3, 2002).

³ See Fla.R.Jud.Admin. 2.035; *In re Certification of the Need for Additional Judges*, No. 94,890 at 6 (Fla. Feb. 18, 1999).

⁴ OPPAGA Report No. 97-67, Information Brief on Weighted Caseload Methods of Assessing Judicial Workload and Certifying the Need for Additional Judges.

⁵ The Delphi process is defined as weighing caseloads by “[identifying] a selected group representative of all judges and possibly administrators that will estimate the time required for different case types through an interactive process than moves the estimates toward a ‘norm’ or ‘consensus’ time that should closely track measured time.” Designing a Judgeship Needs Process for Florida, Gryphon Consulting Services, LLC, February 1998.

⁶ The study, entitled Florida Delphi-based Weighted Caseload Project Final Report, was completed in January 2000.

⁷ Over 200 judges participated in the process.

The DPC estimated case times and reconciled these with a sample of actual case times to establish reasonable case weights. Reasonable case weights were adopted and used to determine optimum caseload.

The Supreme Court generally agreed with the findings of the DPC and in 2000 used the recommended reasonable caseload standards as the primary basis for the certification of need for additional judges, with the exception of the weight for the circuit case categories of drugs and dissolution, and the county case categories of evictions and civil traffic⁸. OPPAGA reviewed the new certification system used by the Supreme Court and concluded that it provides an improvement over previous certification practices and will generate more accurate estimates of the number of judge needed.⁹ The Supreme Court has used the Delphi method in certifying the need for additional judges every year since its development.

C. EFFECT OF PROPOSED CHANGES:

This bill amends s. 35.06, F.S., to authorize two new appellate judges, one each in the Second and Fourth Districts.

The judges filling the new offices created by the bill would be appointed by the Governor, and take office for a term beginning on January 7, 2002.

D. SECTION-BY-SECTION ANALYSIS:

See "Present Situation" and "Effect of Proposed Changes".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Full funding of the additional judges authorized by this bill will require 8 FTE and \$433,047 for FY 2002-03. The annualized impact for FY 2003-04 will be \$724,285.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

⁸ *In re: Certification of the Need for Additional Judges*, 755 So. 2d 79, 81 (Fla. 2000). The court's modifications of the weights resulted in the certification of the need for fewer judges.

⁹ OPPAGA Report No. 99-38, Courts Improve Caseload System; Need to Address Supplemental Resources.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Funding for this bill is included in the House version of the General Appropriations Act.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Nathan L. Bond, J.D.

Staff Director:

Nathan L. Bond, J.D.

STORAGE NAME: h1927.frc.doc

DATE: February 25, 2002

PAGE: 6

AS REVISED BY THE FISCAL RESPONSIBILITY COUNCIL:

Prepared by:

Staff Director:

Jim DeBeaugrine

David Coburn